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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)  
2404

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on \_\_\_\_\_

Signature \_\_\_\_\_

Typed or printed  
name \_\_\_\_\_Application Number  
10/667881First Named Inventor  
Manish MangalArt Unit  
2153Filed  
September 22, 2003Examiner  
Yasin M. Barqadle

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

/Lawrence H. Aaronson/

Signature

assignee of record of the entire interest.

Lawrence H. Aaronson

Typed or printed name

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

attorney or agent of record.

Registration number 35,818

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Telephone number

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

February 15, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

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**UNITED STATES PATENT AND TRADEMARK OFFICE  
(Sprint Docket 2404)**

In re the Application of: )  
Manish Mangal et al. )  
Serial No.: 10/667,881 ) Group Art Unit 2153  
Filed: September 22, 2003 )  
Conf. No. 1159 ) Examiner: Yasin M. Barqadle  
For: METHOD AND SYSTEM FOR )  
UPDATING NETWORK PRESENCE )  
RECORDS AT A RATE DEPENDENT )  
ON NETWORK LOAD )

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Commissioner for Patents  
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Alexandria, Virginia 22313-1450

## **REASONS FOR REVIEW OF FINAL REJECTION**

Applicant requests review of the final rejection mailed October 17, 2007, because the Examiner has not set forth a sufficient basis for rejecting any of the claims.

Pending in this application are claims 1-17 and 19-26, of which claims 1, 4, 9, 14, 19, 20, 25 and 26 are independent and the remainder are dependent.

## 1. Clear Error in Rejecting Claims 1-17, 19, and 25-26

Of these claims, claims 1, 4, 9, 14, 19, 25, and 26 are independent and stand rejected as being allegedly anticipated by Adelman. Adelman clearly fails to anticipate these claims,

however, at a minimum because Adelman fails to disclose (expressly or inherently) using a determination of ***network load*** as a basis to select a keepalive period that is then sent to a client station ***in a response*** to a keepalive message, as recited in each of claims 1, 4, 9, 14, 19, 25, and 26.

In rejecting these claims, the Examiner asserted that Adelman teaches selecting a keepalive period based on ***network load***, because Adelman teaches selecting a keepalive period based on a measure of ***packet loss***. With all due respect, however, Applicant submits that this analysis by the Examiner is incorrect.

Adelman's disclosure of selecting a keepalive period based on a measure of ***packet loss***, does not expressly or inherently amount to a disclosure of selecting a keepalive period based on a measure of ***network load*** as recited in Applicant's claims, because packet loss does not expressly or inherently amount to network load.

First, packet loss does not expressly amount to network load but is rather a measure of the extent to which packets are lost.

Second, packet loss does not inherently amount to network load, because packet loss does not *necessarily* indicate network load. (See M.P.E.P. § 2112, stating that inherency requires the missing element to necessarily flow from the express teachings of the cited art.) In particular, a network can be very lightly loaded and yet experience a high rate of packet loss due to faulty routers or other equipment. Conversely, a network can be very heavily loaded and yet experience very little packet loss if network equipment is running smoothly. Indeed, Adelman itself explains that loss of packets indicates that a cluster member is malfunctioning or inoperative or that the network is having problems. Yet faults in the network do not *necessarily* relate to network load. Consequently, Adelman's teaching of selecting a keepalive period based

on packet loss does not amount to a teaching of selecting a keepalive period based on network load as recited in Applicant's claims.

Because the Examiner has relied exclusively on Adelman's teaching of using *packet loss* as a basis to select a keepalive period, and because that teaching does not meet Applicant's claim limitation of using *network load* as a basis to select a keepalive period, the Examiner has clearly erred in rejecting claims 1, 4, 9, 14, 19, 25, and 26.

Furthermore, Applicant respectfully requests the panel to review the arguments set forth in Applicant's Response After Final (filed December 11, 2007). There, Applicant explained that the Examiner erred as well in rejecting claims 1, 4, 9, 14, 19, 25, and 26, because Adelman fails to teach sending the selected keepalive period "in a response" to a received keepalive message. At best, Adelman teaches a master determining a keepalive period based on information in a received client-keepalive message. However, Adelman does not teach sending that determined keepalive period "in a response" to the received client-keepalive message. Rather, Adelman teaches that the determined keepalive period is sent in a next *periodic* master-keepalive message. As the master-keepalive message is sent periodically, the master-keepalive message is not sent *in response to* the received client-keepalive message, and so the keepalive interval contained in the master-keepalive message is not being sent "in a response" to the client-keepalive message – notwithstanding the fact that the keepalive interval itself is computed based on information that was contained in the received client-keepalive message.

Because Adelman fails to teach sending the determined keepalive period "in a response" to the received keepalive message, Adelman again fails to anticipate claims 1, 4, 9, 14, 19, 25, and 26, and so the Examiner clearly erred in rejecting these claims.

Given the Examiner's clear error in rejecting independent claims 1, 4, 9, 14, 19, 25, and 26, and for the additional reasons set forth in Applicant's Response After Final, Applicant submits that the Examiner also clearly erred in rejecting dependent claims 2-3, 5-8, 11-13, and 15-16.

## **2. Clear Error in Rejecting Claims 20-24**

Of these claims, claim 20 is independent and stands rejected as being allegedly obvious over Adelman in view of Harsch.

In rejecting claim 20, the Examiner relied on Adelman for largely the same reasons that the Examiner relied on Adelman with respect to the other independent claims. As discussed above, however, Adelman fails to expressly or inherently teach selecting a keepalive period based on a measure of network load. Further, Adelman fails to teach sending the determined keepalive period "in a response" to a received keepalive message, for use by the recipient client to determine when to send a next keepalive message as recited in claim 20. Still further, the Examiner has not asserted that Harsch makes up for these deficiencies of Adelman.

Because the combination of Adelman and Harsch does not disclose or suggest the invention recited in claim 20, and because the invention of claim 20 does not reasonably or logically follow from the limited teachings of Adelman and Harsch, Applicant submits that the Examiner has failed to establish *prima facie* obviousness of claim 20 and that the Examiner has therefore clearly erred in rejecting claim 20.

Given the Examiner's clear error in rejecting independent claim 20, Applicant submits that the Examiner also clearly erred in rejecting dependent claims 21-24.

### 3. Conclusion

For the foregoing reasons, Applicant submits that the Examiner has clearly erred in rejecting the claims. Therefore, Applicant respectfully requests the panel to withdraw the rejections and to direct that a notice of allowance be mailed.

Respectfully submitted,

**MCDONNELL BOEHNEN  
HULBERT & BERGHOFF LLP**

Date: February 15, 2008

By: Lawrence H. Aaronson/

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